IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.2727 OF 1991

Jotiram Shamrao Jadhav
Resident of Lavangi,
Taluka Mangalwedha,
District Solapur .. Petitioner.
Vs.
1.Basappa Shekappa Basbire
Resident of Lavangi,
Taluka Mangalwedha,
Dist. Solapur ..
2. The State of Maharashtra .. Respondents.

Mr.S.A.Ghaisas for the petitioner.
None for the respondents.

CORAM : D.B.BHOSALE, J.

DATED : 13TH DECEMBER, 2004.

ORAL JUDGMENT:

1. This petition is directed against the concurrent findings recorded by the authorities below in the tenancy proceedings under section 84-C of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short "the Act"). The petitioner is a purchaser of the land bearing Gat No.292/A admeasuring about 91 Ares situate at Lavangi, Taluka Mangal Wedha, Dist. Solapur (for short "suit land") which was originally owned by one Sukhdeo Rama Nikam. In the suit land, respondent no.1 - Basappa Shekappa Basbire was a tenant. It

is the case of the petitioner that the suit land was surrendered by Basbire to Sukhdeo Rama Nikam, who in turn had sold it to one Ramchandra Mahadu Gidde (Nikam). In the proceedings initiated by Basbire under section 84-B of the Act, the suit land was restored to him. That order was confirmed by the Maharashtra Revenue Tribunal (for short "the MRT") vide order 23.8.1977. On 23.7.1984, Basbire, sold the suit land to the petitioner by registered sale deed. The petitioner's name was, accordingly entered in the record of rights vide M.E.No.306. Thereafter, Ramchandra Gidde, on 19.2.1985 filed an application under section 32-F, 64, 84-C read with section 29 of the Act. That application was rejected by the Tahsildar and ALT Mangal Wedha by his order dated 28.11.1986. While rejecting the claim of Ramchandra Gidde, the Tahsildar gave directions to hold enquiry under section 84-C of the Act. In pursuance thereof, the Tenancy Awal Karkun, Mangalwedha, sometime in September 1988 started enquiry under section 84-C of the Act against the petitioner and vide order dated 30.11.1989 declared the sale transaction/transfer between the petitioner and Basbire illegal and as a result of which the suit land stood vest in the State Government. That order was further carried

in appeal and thereafter in revision. Both the authorities below affirmed the order passed by the Tenancy Awal Karkun dated 30.11.1989 vide their judgment and orders dated 21.12.1989 and 14.3.1991.

2. The only contention urged by Mr.Ghaisas, learned counsel for the petitioner is that there was unreasonable delay in taking action under section 84-C of the Act and on that count alone the orders passed by the authorities below deserve to be quashed and set aside. He placed heavy reliance on the judgment of the Apex Court in the case of **Mohamad Kavi Mohamad Amin Vs. Fatmabai Ibrahim (1997) 6 Supreme Court Cases 71**. I perused the judgments and orders passed by the authorities below and other material placed before me. It is true that the transaction between the petitioner and Basbire was in contravention of section 43 and 64 of the Act. Admittedly, the previous sanction was not obtained before the transfer of the suit land. The transfer was effected by the registered sale deed dated 23.7.1984. The order of Tahsildar and ALT Mangalwedha directing to hold enquiry under section 84-C of the Act was passed on 28.11.1986 whereas the proceedings under section 84-C were initiated sometime in September 1988. This clearly

shows that the action was initiated after about four years from the date of transaction. Even if it is assumed that the tenancy authorities were not aware of such transaction, they undoubtedly were knowing the transaction in November 1986. However the enquiry under section 84-C was initiated sometime in September 1988. Keeping all these dates in view it is clear that there was unreasonable delay in taking action under section 84-C of the Act and if the sale deed is declared invalid the petitioner would suffer irreparable injury. The Apex Court in the case of **Mohamad Kavi Mohamad Amin** (supra) had an occasion to deal with somewhat similar situation wherein after considering the facts of that case, the Apex Court in paragraph 2 of the judgment held thus:

> "2. .... Section 84-C of the Act does not prescribe any time for initiation of the proceeding. But in view of the settled position by several judgments of this Court that wherever a power is vested in a statutory authority without prescribing any time-limit, such power should be exercised within a reasonable time. In the present case the

transfer took place as early as in the year 1972 and suo motu enquiry was started by the Mamlatdar in September 1973. If sale deeds are declared to be invalid the appellant is likely to suffer irreparable injury, because he has made investments after the aforesaid purchase. In this connection, on behalf of the appellant reliance was placed on a judgment of Justice S.B.Majmudar (as he then was in the High Court of Gujarat) in State of Gujarat V. Jethmal Bhagwandas Shah disposed of on 1.3.1990, where in connection with section 84-C itself it was said that the power under the aforesaid section should be exercised within a reasonable time. This court in connection with other statutory provisions, in the case of State of Gujarat V. Patil Raghav Natha and in the case of Ram Chand V. Union of India has impressed that where no time limit is prescribed for exercise of a power under a statute it does not mean that it can be exercised at any time; such power has to be exercised within a reasonable time. We are satisfied that in the facts and circumstances of the

present case, the suo motu power under Section 84-C of the Act was not exercised by the Mamlatdar within a reasonable time. Accordingly, the appeal is allowed".

2.1 It is thus clear that in the case before the Apex Court the transfer had taken place in 1972 whereas suo motu enquiry was started in September 1973. The Apex Court while dealing with the facts of that case held that the action was not initiated within reasonable time. The transfer in the present case took place on 23.7.1984, while enquiry under section 84-C was started in September, 1988. Keeping that in view I have no hesitation in holding that suo motu power under section 84-C of the Act in the present case was not exercised within a reasonable time. In the circumstances, this petition is allowed. The judgments and orders passed by the authorities below are quashed and set aside. No order as to costs.

(D.B.Bhosale, J.)